

Assembly Bill No. 925

CHAPTER 409

An act to add Chapter 13 (commencing with Section 2850) to Part 4 of Division 4 of the Probate Code, relating to conservatorship.

[Approved by Governor September 16, 1999. Filed
with Secretary of State September 16, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 925, Hertzberg. Conservatorships: statewide registry.

Existing law sets forth a comprehensive body of law relating to conservatorship, whereby a conservator may be appointed for a person who is unable to properly provide for his or her personal needs for physical health, food, clothing, or shelter, or who is substantially unable to manage his or her own financial resources or resist fraud or undue influence, as provided. Existing law sets forth a comprehensive body of law relating to guardianship of the person or estate of a minor.

This bill would require the Department of Justice to maintain a Statewide Registry, to make all information in the registry available to the court for any purpose, and to make certain information available to the public on request. The bill would require all persons who wish to serve as a conservator or guardian or who are currently serving as a conservator or guardian to register or re-register with the Statewide Registry, except as provided. It would also require these conservators and guardians to file a signed declaration containing specified information. A person who asserts, pursuant to this provision, the truth of any material information which he or she knows to be false would be guilty of a misdemeanor punishable as specified. By creating a new crime, the bill would impose a state-mandated local program. The bill would authorize the Department of Justice to charge a reasonable fee to persons registering and re-registering with the Statewide Registry for the cost of that registration, and would require it to issue a certificate of registration. The bill would prohibit a court from appointing a person as a conservator or guardian unless that person is registered with the Statewide Registry, except as provided. The bill would provide liability for a civil penalty for specified fraudulent acts of a conservator or guardian. The bill would authorize trustees to register with the Statewide Registry. The bill would require a court clerk to forward a copy of any complaint filed with that court to the registry. By increasing the duties of local officials, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. Chapter 13 (commencing with Section 2850) is added to Part 4 of Division 4 of the Probate Code, to read:

CHAPTER 13. STATEWIDE REGISTRY

2850. (a) The Department of Justice shall maintain a Statewide Registry and shall make all information in the registry available to the court for any purpose, but shall otherwise be kept confidential. On request, the registry may disclose to the public whether an individual is or is not registered with the Statewide Registry. Except as otherwise provided in Section 2854, all persons who wish to serve as a conservator or guardian or who are currently serving as a conservator or guardian shall register with the Statewide Registry and shall re-register every three years thereafter.

(b) All conservators and guardians required to file information with the county clerk pursuant to Section 2340 and to register pursuant to this chapter shall file a signed declaration with the Statewide Registry. A person who signs a declaration pursuant to this subdivision asserting the truth of any material matter which he or she knows to be false is guilty of a misdemeanor punishable by imprisonment for up to one year in a county jail, or a fine of not more than two thousand dollars (\$2,000), or both that fine and imprisonment. The declaration shall contain the following information:

- (1) Full name.
- (2) Professional name, if different from (1).
- (3) Business address.
- (4) Business telephone number or numbers.
- (5) His or her educational background and professional experience, including verification of any college or graduate degree claimed.



(6) The names of the conservator's or guardian's current conservatees.

(7) The aggregate dollar value of all assets currently under the conservator's or guardian's supervision.

(8) Whether he or she has ever been removed for cause or resigned as conservator or guardian in a specific case, the circumstances of that removal or resignation, and the case names, court locations, and case numbers.

(c) On request, the registry may disclose to a member of the public the educational background and professional experience of a conservator or guardian registered with the Statewide Registry.

(d) The Department of Justice may charge a reasonable fee to persons registering and re-registering with the Statewide Registry for the cost of that registration. The Department of Justice shall issue a certificate of registration to each registrant.

(e) Each court clerk shall forward a copy of any complaint filed with that court, and found to be meritorious by that court, against a conservator or guardian in his or her capacity as a conservator or guardian for inclusion in the Statewide Registry. The Statewide Registry shall place any copies of those complaints in the file of that conservator or guardian.

2851. (a) A court may not appoint a person as a conservator or guardian unless that person is registered with the Statewide Registry. In appointing a person as a conservator or guardian, the court shall examine and consider the information contained in the Statewide Registry for that person.

(b) Any person serving as a conservator or guardian prior to January 1, 2000, who does not register with the Statewide Registry by either January 1, 2001, or by the date of the next required review pursuant to Section 1850, whichever is sooner, shall be removed as a conservator or guardian by the court.

2852. (a) Any person who serves as a conservator or guardian without being registered with the Statewide Registry, who commits fraud in registering, who falsely asserts that he or she is registered, or who makes false claims or representations as to the nature of his or her file contained in the registry, shall be subject to a civil penalty in the amount of two hundred dollars (\$200) for the first violation and a civil penalty in the amount of five hundred dollars (\$500) for each subsequent violation, to be assessed and collected in a civil action brought by the Department of Justice. All civil penalties collected shall be deposited in the General Fund. A person who lawfully delays registration pursuant to subdivision (b) of Section 2851 shall not be subject to a civil penalty for serving as a conservator or guardian without being registered until the time that subdivision (b) of Section 2851 authorizes his or her removal for failure to register.

(b) Any court that removes a conservator or guardian for cause and any court that has accepted the resignation of a conservator or

guardian shall notify the Statewide Registry of that removal and the reason therefor. The courts shall consider that information prior to the appointment of a conservator or guardian pursuant to a subsequent petition for appointment as conservator or guardian.

2853. Notwithstanding any other provision of this chapter, in cases of urgency, where circumstances and justice warrant the appointment of a conservator or guardian and time is limited, a court may appoint a person as conservator or guardian without consulting the Statewide Registry or requiring registration prior to appointment.

2854. (a) This chapter does not apply to any public conservator, public guardian, or to any conservator or guardian who is related to the conservatee or ward by blood, marriage, or adoption. This chapter does not apply to any person who is not required to file information with the county clerk pursuant to Section 2340, to any person or entity subject to the oversight of a local government, including an employee of a city, county, or city and county, or to any person or entity subject to the oversight of the state or federal government, including a supervised financial institution.

(b) This chapter does not apply to any conservator who resided in the same home with the conservatee immediately prior to the condition or event that gave rise to the necessity of a conservatorship. This subdivision does not create any order or preference of appointment, but simply exempts a conservator described by this subdivision from registration.

2855. It is the intent of the Legislature that both:

(a) Counties that provide for registration of conservators or guardians continue to do so, and that the Statewide Registry not replace county registration.

(b) Courts maintain oversight over the complaint process in order to safeguard the reputations of conservators and guardians against unfounded complaints.

2856. Any trustee may register with the Statewide Registry. It is the intent of the Legislature that trustees may register if they so desire, but that trustees are not required to register.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant

to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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